IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1940.

No. 179

In the Matter of GRANADA APARTMENTS, INC., Debtor.

WEIGHTSTILL WOODS, Court Trustee,
Petitioner,

vs.

ARLINGTON, INC.,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO REVIEW ACTION OF THE CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT UPON AN APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES, NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

PETITION FOR WRIT OF CERTIORARI.

WEIGHTSTILL WOODS,
Attorney for Petitioner.

THE GUNTHORP-WARREN PRINTING COMPANY, 310 WEST JACKSON, CHICAGO

SUBJECT INDEX.

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PETITION FOR WRIT OF CERTIORARI.

To the Honorable Judges of the Supreme Court of the United States:

Petitioner Weightstill Woods as Court Trustee, prays the issuance of a writ of certiorari to review the decision of the United States Circuit Court of Appeals for the

Seventh Circuit rendered March 26, 1940, which on an appeal taken by this petitioner (1) *reversed* the findings of fact of the United States District Court as entered by that court on May 22, 1939, and (2) *affirmed* the decree of the District Court of the same date, and (3) sustained the motions of respondent, Arlington, Inc., to consolidate several appeals then pending between different parties to the extent of making the original transcript of record in all of such appeals the record for this appeal. (PR. 84-98.)

STATEMENT AS TO JURISDICTION.

The Opinion of the United States Circuit Court of Appeals was delivered on March 26, 1940. (PR. 83-84.)

The Court Trustee's petition for a rehearing (PR. 101-109) was denied by the United States Circuit Court of Appeals on May 7, 1940. (PR. 117.)

On May 17, 1940, an order was obtained by petitioner to stay the mandate pending review in this court. (PR. 119.)

This timely application for review by this court is made on June 24, 1940. This petition is presented in accordance with Section 240 (a) of the Judicial Code as amended, and Rule 38 of this Court as amended.

SUMMARY OF THE MATTER INVOLVED.

I.

In The Trial Court.

On May 17, 1937, petitioner was appointed as Court Trustee in the reorganization proceedings of the Granada Apartments, Inc., (R.* 3, PR.* 2; R. 36, PR. 24-25). This debtor corporation had been organized in 1929 as an Illinois Corporation (R. 45) and was the successor of the Granada Hotel Corporation, which was organized in 1924, as an Illinois Corporation (R. 41, PR. 30). The property of respondent, Arlington, Inc., is located across the street from the debtor Granada Hotel, and was built in the same year, 1924 (R. 40, PR. 28-29). Granada had furnished Arlington, Inc., with heat, refrigeration services, and hot and cold water supply, by piping through an underground tunnel (R. 41, PR. 29) since 1924. From the above relationships, arose the litigation sought to be reviewed by this petition.

On September 14, 1937, this petitioner filed in the District Court his sworn "*Petition by Court Trustee to have determined compensation for services as to Arlington Hotel.*" (R. 3, PR. 2.) That petition set forth the following claims: (1) "That $1,000 per month was and is a reasonable charge for said services to be paid by the Arlington property, earned and due to debtor Estate." (R. 4, PR. 3.) (2) That the City National Bank and Trust Company of Chicago from 1933 to May 17, 1937, acted "in the dual and conflicting capacity of trustee in possession of Arlington Hotel Property, and also of Granada

* "R." refers to the original unprinted record and "PR." to the printed transcript of record.

Hotel Property—debtor Estate" and that said trustee "collected only $600 per month from the Arlington and paid only that much to the Granada" for said services. (R. 4, PR. 3.) (3) That prior to 1933 for many years the sum charged and paid was $940 or more per month, and that by such wrongful reduction and failure of duty by said unfaithful trustee, the debtor Estate was deprived of $340 additional compensation per month, totalling $19,170 or more for period of four years and seven and one-half months, and that Arlington, Inc., owes for this item. (R. 4, PR. 3.) The petition concluded by requesting that the court find what sum was due from Arlington to Granada for past services. (R. 5, PR. 4.) Included in the abstract of record (R. 6-10, PR. 5-9) are the several exhibits of the Court Trustee that were attached to the petition. Exhibit 1 (R. 6, PR. 5) was served upon the former bi-party Trustee, City National and its counsel. Exhibit 2A (R. 7, PR. 6) was sent to that former trustee as was Exhibit 2C (R. 9, PR. 8). City National filed no answer in this Arlington matter.

On September 18, 1937, respondent Arlington, Inc., filed its answer to the Court Trustee's petition and asserted that the reduced payments to Granada for services were more than fair (R. 12-13, PR. 10-11). This answer did not deny the dual and conflicting trusteeship of City National Bank and Trust Company of Chicago.

The question of discontinuing the services was raised in both pleadings (R. 5, PR. 4; R. 16-17, PR. 12), and was further raised by other pleadings from time to time, and particularly by the petition of Arlington, Inc., filed December 3, 1937, which demanded that such services from Granada be cut off. (R. 15-18, PR. 11-12.) This petition was answered by the petitioner Court Trustee, on December 6, 1937. (R. 19-22, PR. 13-15.) The answer stated:

(1) That such notice to terminate the services was insufficient. (2) That the Court Trustee was entitled to have compensation paid for past services rendered, before any termination should be effected. (3) That such termination would impair the lien of the Court Trustee for such compensation. (4) That the "Barton Contract" (R. 26-30, PR. 17-21) is in full force and effect as to the right to continue such services. (5) That the evidence (taken on earlier pleadings) shows that some $20,920 plus interest is due from Arlington (R. 22, PR. 15), including Granada valet commissions of $250 wrongfully received by Arlington, Inc. (R. 22, PR. 15.)

On December 10, 1937, the court ordered that Arlington might discontinue receiving Granada services, but provided "that the court cannot presently adjudicate or determine its right so to do." (R. 32, PR. 21-22.)

On May 2, 1939, the District Court made and filed its findings of fact and conclusions of law. (R. 34-72, PR. 23-57.) These findings stated that:

> (1) City National Bank and Trust Company had also been trustee in possession of the property of Arlington, Inc. (R. 55, PR. 43.)
>
> (2) City National, the Committee, and Counsel were guilty of a breach of trust in representing and managing both the Arlington and Granada properties, (R. 56, PR. 45) particularly after it appeared that adverse interests existed. (R. 60, PR. 49; R. 61, PR. 50.)
>
> (3) City National officials in 1934 charged off a balance of $4,080 that had been regularly billed to Arlington, and placed upon the Granada books for the services rendered during 1933 (R. 56, PR. 45), and that this deliberate purpose to favor Arlington by the forcible reduction in charges was a breach of trust without any warrant or reason, and was in derogation of the Barton Contract, which remains in force at this time. (R. 57, PR. 46.)
>
> (4) That although the Arlington payments to Gran-

ada were reduced the rate of payment to Granada from Lincoln Park Manor (another hotel adjoining Granada, also in control of City National) for similar services, remained unchanged and the same. (R. 57, PR. 45-46.)

(5) That the reasonable value of the heat, hot and cold water and refrigeration service which have been rendered to the Arlington Hotel property by Granada until there was a wilful cut off of pipes by respondents and refusal further to receive the services after December 10, 1937, is found to be at the rate of one Thousand Dollars ($1,000) per month. (R. 62, PR. 51.)

(6) That City National owes Granada the total sum of $19,420 for the Arlington items. (R. 63, PR. 52.)

It is to be noted that the court in its findings did not charge Arlington, Inc. for the underpayments for services rendered Arlington by Granada, either separately or jointly with City National.

Accordingly, by an order entered on June 30, 1939, the District Court dismissed the petition of the Court Trustee against the Arlington, Inc. (R. 70-71, PR. 59-60); stating that the judgment against City National, made it unnecessary to rule against Arlington.

The judgment against City National has not been paid. It is contested in this court. The basis for its liability arises from breach of trusteeship. Arlington is liable because it received and resold to its guests the services furnished and rendered by Granada above described. The two grounds for liability are not alike.

On August 9, 1939, this petitioner, the Court Trustee, filed in the District Court his "Notice of Appeal" in the Arlington case. (R. 75, PR. 61.)

On August 22, 1939, this petitioner, the Court Trustee, filed with the District Court his "Statement of Points and Assignment of Errors for Appellant, the Court Trustee

pursuant to Rule 75 (d) as established by the Supreme Court" and included therewith his praecipe for record. (R. 77-78, PR. 61-63.) This Court Trustee, later filed his "additional designation of record." (R. 82, PR. 63.)

These last three documents are important in the light of certain orders entered at a later date by the United States Circuit Court of Appeals. In this connection it should be noticed that respondent, Arlington, Inc., at no time filed a supplemental or additional praecipe for record.

II.

In the Circuit Court of Appeals.

On October 27, 1939, a motion was made in the Circuit Court of Appeals by counsel for respondent Arlington, Inc., (who are also counsel for City National Bank and Trust Company of Chicago, former trustee of both Arlington and Granada) to consolidate the Arlington appeal (No. 7086) with certain appeals between Granada and City National (Nos. 6986 and 7060), which were also pending in the Court of Appeals. On November 3, 1939, the Circuit Court of Appeals denied the motion of Arlington, Inc., to consolidate such matters. On November 7, 1939, counsel for Arlington, Inc., renewed their motion to consolidate and filed lengthy suggestions in support of the renewed motion. On November 27, 1939, the Circuit Court of Appeals although denying the motion to consolidate, ordered that *both parties might refer to the record of the other appeal cases* (PR. 82) and specifically to the record in appeals 6986 and 7060, which cases were consolidated by prior order and were entitled, City National Bank & Trust Company of Chicago, *et al. vs.* Weightstill Woods, Court Trustee, *et al.* Thus the order of the court permitted respondent Arlington, Inc., to use in the case of Weightstill

Woods, Court Trustee *vs.* The Arlington, Inc., the transcript of record in an entirely different case between other and different parties, which parties did not include Arlington, Inc. The order of the court did not recite or mention upon what theory, rule of law, rule of court, or rule of Civil Procedure the order was based. It is to be noted however that the respondent, Arlington, Inc., apparently did not proceed upon the basis of Rule 75(h) of Civil Procedure for the District Courts of the United States as adopted in 1938 by the Supreme Court of the United States. The motion of respondent did not recite that there had been a mistake or omission or any such facts as would bring that section into operation. The order of the court however in effect operated to import matter into the transcript of record of the Arlington case, which was not specified by either party. The order achieves far wider result than the application of Rule 75(h) could have accomplished. We find no power for such an order.

The Opinion of the Circuit Court of Appeals was delivered on March 26, 1940. This Opinion is not merely an Opinion separately for appeal No. 7086, Weightstill Woods, Court Trustee *vs.* Arlington, Inc. It is a consolidated Opinion which attempts to deal with and determine (all adversely to the Court Trustee) some four other appeals also. The Opinion does not indicate which record was used in determining which appeals. It is correct to state however, that in determining this Arlington case and in reversing the findings of the trial court the court went far beyond the transcript of the record as specified by the parties to the Arlington case. If it were proper, the order of the court of November 27, 1939 (PR. 82), would permit not only the other parties to extend themselves (and extraneous matters) over and beyond the scope of the specified record, but would also permit the Circuit Court of Appeals to consider said foreign facts and persons. The

plight which the appeal court found itself in as a direct result of its order consolidating the records, was nicely stated on the first page of the Opinion (PR. 85) as follows:

> "The record is of such volume that we find it difficult to make even a summary of the situation in an opinion of reasonable length. It is almost as difficult to obtain a clear picture of the involved issues."

Petitioner Court Trustee, asks this high court to review the action of the Circuit Court of Appeals, in the earnest belief that the Opinion of that court does not adequately overcome its self-imposed difficulties as above stated. That court (1) by its orders has increased the size of the record beyond any length specified by the parties, (2) then laments its plight but (3) fails to restrict its consideration to the record as specified, or in the alternative thoroughly and minutely to examine the super-length record. This failure of the court adequately to examine either the "new" record in its increased volume, or the record as originally specified by the parties is shown abundantly by several important omissions, and misconceptions in the court's opinion.

Factual matters presented in the record, which were uncontested and admitted, but which the opinion of the Circuit Court of Appeals overlooked or ignored.

Omission Number One—The "Barton Contract"—The answer filed on December 6, 1937, by the Court Trustee stated that the relationships of the parties were governed by the "Barton Contract." (R. 21, PR. 14.) That contract was then set forth *haec verba* as Exhibit "C" of the said answer. (R. 26-31, PR. 17-21.) That contract provided for the rate of payment by Arlington for Granada's services. The District Court findings confirm the "Barton Contract" (R. 57, PR. 46) by ruling:

> "That contract remains in force at this time."

Thus the existence, validity and effect of the Barton Contract is one of the central issues of this case. Its existence, validity and effect were determined by the trial court to be full and complete. Under these circumstances the Circuit Court of Appeals (had it read the record) would feel its duty to decide the effect of the Barton Contract. *At no place in the Opinion of the Circuit Court of Appeals however is the existence of the Barton Contract hinted.* It is not mentioned. The principal finding of the trial court is ignored. This occurs despite the facts that the Barton Contract was fully discussed by the Court Trustee at pages 5 and 14 of his original brief, and pages 15 and 16 of his reply brief in the Court of Appeals. Respondent Arlington, Inc., at pages 11 and 12 of its brief, denied the *effect* of the Barton Contract. Thus the issue was drawn and brought to the attention of the court,—but was overlooked or ignored.

Omission Number Two — The Dual Trusteeship and Breach of Trust. The original petition filed by the Court Trustee on September 14, 1937, in the District Court, charged that the City National Bank and Trust Company of Chicago, acted "in the dual and conflicting capacity of trustee in possession" of both the Granada and Arlington Hotel properties from 1933 to May 17, 1937, and that this breach of trust directly resulted in the underpayments from Arlington to Granada. (R. 4, PR. 3.) The findings of the District Court stated that City National was trustee of Arlington (R. 55, PR. 43), and of Granada at the same time, and that its counsel in the management of both properties was the same firm of attorneys. Also that such trustee and counsel were guilty of a breach of trust in representing such adverse interests. (R. 60, PR. 49; R. 61, PR. 50.) And further that the action of that dual trustee in reducing the payments for services was a deliberate act, unfairly favoring Arlington, and harmful

to Granada, and constituted serious breaches of trust. (R. 57, PR. 46.) These findings were set forth at page 5 of the Court Trustee's original brief filed in the Circuit Court of Appeals, and were further discussed at page 14 of the same brief. The fact that City National was trustee of Arlington at the time of the reduction in payments, is also set forth at pages 13 to 15 of the Court Trustee's reply brief. The brief of respondent Arlington, Inc., set this contention forth as follows (page 9 of that brief):

> "The gist of finding 42 is that the City National was operating both properties and was arranging the basis on which the services should be delivered by the Granada to the Arlington, and that it was improper for the City National Bank and Trust Company to be dealing on behalf of both properties."

Then Arlington at page 10 of the same brief again stated the contention in an admirable way, thus:

> "In fact, *the whole theory of the findings* is that in breach of its trust City National Bank and Trust Company used its position *as Trustee under the mortgage indentures on both properties* to fraudulently and secretly force the Granada to deliver heat to the Arlington at a price below its value." (Italics ours.)

Thus both litigants were aware of the great importance attached to the dual trusteeship of City National. **That dual trusteeship was never denied by Arlington, City National, or their counsel.** Respondent Arlington stated that the "whole theory of the findings" was based upon that fact.

But the Court of Appeals overlooked or ignored this central fact even though in that very court the same counsel appeared for Arlington as for City National. At no place in the Opinion of the Circuit Court of Appeals is it mentioned that *City National was trustee at one and the same time for both Granada and Arlington, and in fixing Granada's service charges to Arlington dealt and contracted with itself.* But the Opinion not only omits the

theory of the District Court and of the Court Trustee. It credits them with a strange new theory which was stated thus by the Court of Appeals (PR. 93):

> "The Arlington was in the process of reorganization, and it seems to be the position of the court trustee that because a committee representing the bondholders of Arlington was connected with City National in the same manner as the committee in the Granada matter, that there was some character of fiduciary relationship existing by which City National should have obtained the compensation originally established for this service."

The Opinion then added:

> "Though this situation may arouse some suspicion, we do not see how it can amount to fraud."

This petitioner submits that this present omission was of such fundamental importance that in making it the Opinion by the Circuit Court of Appeals rests upon a false premise of fact which prevents any fair or complete examination of all subsequent facts presented by the record.

The Court Trustee throughout asserted and depended upon this fundamental breach of fiduciary duty by the agent and trustee of Arlington to throw the *burden of proof* that the actions of the dual trustee were fair upon Arlington the principal whose agent was acting in the interests of Arlington and against the interests of Granada. The whole theory in the trial and appeal courts was upon the legal principle of *respondeat superior*. When the Circuit Court of Appeals overlooked or ignored the fundamental fact of the breach of trust as shown by the dual fiduciary representation of adverse interests by City National, it overlooked or ignored such well recognized and accepted rules of law relating to trustees and fiduciaries as to accomplish a denial of all established process of law to this petitioner, the Court Trustee.

Omission Number Three. The unfaithful trustee "doctored" Granada's books and eliminated a $4,080 credit thereon, which was due Granada from Arlington.

The findings of the District Court (R. 56, PR. 45) stated:

> "Instead of reorganizing three properties as a unit or resigning from two of the trusts, City National officials at the beginning of 1934 consummated a course of action which had been planned for a year, by charging off a balance of Four Thousand Eighty Dollars ($4,080) that had been regularly billed to Arlington, and placed upon the Granada books of account, for the heat, hot and cold water and refrigeration services furnished by Granada during the year 1933. The charge (of which said sum is the unpaid balance) was made pursuant to the Barton Contract."

This finding by the trial court was set forth *haec verba* at page 5 of the Court Trustee's original brief as filed in the Circuit Court of Appeals. This "doctoring" of Granada's books by City National was further charged at page 14 of the same brief. The brief of respondent Arlington, Inc., did not deny such charges or findings. Yet the Opinion of the appeal court did not mention it. Thus an unchallenged and undenied finding of the District Court was entirely overlooked or ignored by the United States Circuit Court of Appeals. This fact more than any other evidence would illuminate the methods, intentions and results of the dual trustee and the desire of City National Bank & Trust Company of Chicago, that trustee, deliberately and overtly to favor Arlington to the great detriment of Granada, its creditors and bondholders. The Circuit Court of Appeals overlooked or ignored this legal searchlight.

The Opinion of the Court.

The Opinion of the United States Circuit Court of Appeals for the Seventh Circuit dealt with some five appeal cases. That part of the Opinion which dealt with

the Arlington appeal (No. 7086) reads as follows (PR. 98):

> "Appeal 7086 is from an order of June 30, 1939, dismissing the petition of the court trustee wherein it was sought to recover against Arlington, Inc. (successor of Arlington Hotel). This claim, or the major portion of it, is predicated upon the same situation discussed under Item VIII in Appeals 6986 and 7060. In those appeals, it was sought to hold City National liable for the difference in the amount it received as compensation for heating and refrigeration facilities furnished by Granada to Arlington, and the amount which the court trustee contended should have been charged. The argument here on behalf of the court trustee is predicated upon the same findings of fact (so far as material) as those upon which it was sought to hold City National liable. We have concluded those findings were without substantial support and for that reason City National should not be required to account in the matter. We also conclude there is no liability on the part of Arlington, Inc. The decree of the District Court is affirmed. Costs to be taxed to the court trustee."

That part of the Opinion wherein the court had reversed the findings against City National and its conduct in regard to the Arlington stated as follows (PR. 92-93):

> "Item VII. The sum of $250 represents commissions paid to Arlington Hotel because of business supplied to the valet shop in the basement of the debtor's property. It was customary for a hotel to receive a commission on business furnished an outside valet shop. It is argued by City National that it was of benefit to debtor's property to maintain a valet shop on the premises in order that its tenants might be accommodated; that it did not have sufficient business of its own to maintain such a shop and, therefore, as an inducement to Arlington, it paid the customary commission for the business furnished. We perceive neither fraud nor mismanagement in such an arrangement.
>
> "Item VIII. It seems that adjacent to Granada Apartments and about the same time, there were con-

structed two other apartment buildings, Lincoln Park Manor and Arlington Hotel. Granada provided the facilities for furnishing heat, hot water and refrigeration to the other buildings.

"Prior to December, 1933, Granada received as compensation for such services $11,280 per annum. At that time a contract was entered into between the owners of the two properties by which Granada was to receive as compensation $7200, or a reduction of $4080 per annum. Central Republic Trust Company, as trustee, continued the same charge, as did City National after it took possession. The amount of this item, $19,170, represents the difference between what City National and its predecessor received, and what they would have received had there been no reduction in such charge. The Arlington was in process of reorganization, and it seems to be the position of the court trustee that because a committee representing the bondholders of Arlington was connected with City National in the same manner as the committee in the Granada Matter, that there was some character of fiduciary relationship existing by which City National should have obtained the compensation originally established for this service. Though this situation may arouse some suspicion, we do not see how it can amount to fraud. Especially is this true in view of the rather conclusive testimony of at least two engineers that the compensation received from Arlington was fair and reasonable. In fact, it was shown that Arlington proposed to equip its own building with facilities to provide such service in the event that Granada should insist on a charge greater than what was made."

THE TWO PRINCIPAL QUESTIONS PRESENTED.

I.

May a Circuit Court of Appeals Ignore Rule 75 of Civil Procedure as Adopted by the Supreme Court, and Allow a Party Litigant to Consolidate With One Record Other Records in Other Appeals From Different Judgments Between Other and Different Parties?

Rule 75's various paragraphs comprehensively provided what an appeal record shall contain and how such matters shall be designated.

Paragraph (a) provides that after the record has been specified by appellant, the other parties shall have 10 days within which to designate additional portions.

Paragraph (b) provides for the filing of stenographically reported evidence *if such evidence is designated.* In this appeal such evidence was not designated by either party.

Paragraph (c) deals with the form of testimony. No testimony was designated by either party litigant.

Paragraph (d) provides that when the complete record is not designated by appellant that then appellant must serve with such designation a statement of points. In the present appeal this was done by the appellant Court Trustee. (R. 77, PR. 61.)

Paragraph (e) makes provision for an abbreviated record. The original record as designated was abbreviated.

Paragraph (f) provides that the record may be stipulated instead of designated.

Paragraph (g) states what the necessary parts of the

record shall consist of and that they shall be prepared by the clerk of the District Court.

Paragraph (h) provides that:

> "If anything material to either party is omitted from the record on appeal *by error or accident* * * * the appellate court, on a proper suggestion or of its own initiative, may direct that the omission or misstatement shall be corrected, and if necessary that a supplemental record shall be certified and transmitted by the Clerk of the District Court." (Italics ours.)

Obviously a consolidation of different records in different appeals between different parties is not covered by this provision.

Paragraph (i) provides for the examination of the original exhibits and papers by the Appellate Court.

Paragraph (j) provides for the record to be used in the Appellate Court for the making of preliminary motions.

Paragraph (k) provides that:

> "When more than one appeal is taken to the same court *from the same judgment*, a single record on appeal shall be prepared containing all the matter designated or agreed upon by the parties, without duplication." (Italics ours.)

The Circuit Court of Appeals may have believed that in consolidating the appeal records, it was acting pursuant to this rule. In this case (No. 7086) however, the appeal was not from the "*same judgment*" as in the City National cases (Nos. 6986, 7060, 7061, 7186), and therefore Rule 75 (k) could not operate to permit the consolidation of records of appeals from such different judgments between different parties.

Paragraph (l) relates to the requirements of printing the records.

Thus we see that there is nothing in Rule 75, which

would permit the Circuit Court of Appeals to consolidate the records of the different appeals as it did.

The designated record contained only (1) the pleadings and (2) the findings of fact and conclusions of law, and (3) the orders of the District Court relating to the claim in question. Petitioner submits that the Circuit Court of Appeals was in error in permitting the wholesale consolidation of records as here complained of.

II.

May a Court of Appeal Reverse and Overrule the Findings of Fact of the Trial Court Without Looking at the Evidence Upon Which Those Findings Were Made?

At pages 9-13 of this petition it has been noted that the Circuit Court of Appeals ignored or overlooked many of the central and controlling facts upon which the Findings of Fact of the District Court were based. It was further noted that the Opinion of the Circuit Court did not contradict or mention certain of the material as contained in the court's findings. Despite this the Circuit Court overruled and reversed *all* findings of the District Court that related to the Arlington incident including those which were not denied or contested by either party and which were not mentioned in the Opinion of the Circuit Court. Petitioner submits that the Circuit Court of Appeals in holding that (PR. 98):

> "We have concluded those findings were without substantial support * * *"

without having examined the evidence upon which the findings were based, and having demonstrated by its Opinion that it had even overlooked major portions of the findings as well as the evidence upon which such overlooked findings were based, was in manifest error.

The action of the Circuit Court of Appeals was contrary to Rule 52 of the Rules of Civil Procedure (28 U. S. C. A. following Section 723 c) which in part states:

> "Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses."

In all fairness to the appeal court, petitioner states that it is possible that the Circuit Court of Appeals when it entered its wholesale order reversing the lower court's findings did not comprehend the full extent of what it was reversing.

Reasons Relied Upon for the Allowance of the Writ.

(1) The Circuit Court of Appeals allowed consolidation of the transcript of records as filed in different appeals from different judgments between different parties in violation of Rule 75 of the Rules of Civil Procedure.

(2) The several important omissions by the Opinion of the Circuit Court of Appeals, shows that the Court of Appeals, in violation of Rule 52 of the Rules of Civil Procedure, reversed and overruled the substantial findings of fact made by the District Court, without looking at but ignoring the evidence upon which those findings were made.

(3) Many of the findings of fact made by the District Court upon hearing in open court without a reference, which are ignored, not mentioned nor discussed in the Opinion as rendered by the Circuit Court of Appeals, are reversed by a "blanket" order.

(4) The Circuit Court of Appeals allowed respondent, Arlington, Inc., who had not filed a cross-appeal to have affirmative relief in that that court reversed the findings of the trial court which findings were adverse to respond-

ent, Arlington, Inc. This was done despite the fact that the record as designated by the parties did not include the evidence upon which those findings were based.

(5) The Circuit Court of Appeals reversed *all* findings of fact made by the trial court including those which were uncontested by the pleadings or proofs of the party litigants.

In Conclusion.

This petitioner is deeply mindful of the great number of controversies of both a private and public nature which are appealed to this high court. Petitioner fully realizes the great burden which the determination of such numerous controversies places upon the judges of this court of last appeal and the consequent necessity of Your Honors to decline to review many of such controversies. This petitioner, the Court Trustee, does not file this petition heedlessly or in disregard of such important considerations but is firmly of the opinion that only an appeal to this high court can right a series of grievous wrongs and breaches of trust suffered by the debtor, its bondholders and creditors.

Petitioner also suggests that the Federal Courts have not yet determined or passed upon the nature or scope of paragraph (k) of Rule 75 (of the Rules of Civil Procedure) as that paragraph is related to paragraph (h), and that such a ruling by this high court would be in the interests of the American bar generally.

Finally petitioner wishes to say that when a Circuit Court of appeals overlooks or ignores the fundamental and controlling pleadings, proofs and findings of fact of the trial court, and proceeds to write and publish an Opinion which because of such omissions substitutes mere conclusion and assertion for analysis and reason, there

is such a violation of duty and of orderly process by that court as calls for the corrective influence of the Supreme Court of the United States.

This petitioner does not include herewith or separately any brief on the law involved since he believes that the questions presented are so fundamentally simple and so plainly in violation of the duty of any court of appeal as to be readily apparent without the citation of cases or other authority.

Prayer for Relief.

WHEREFORE, petitioner prays the allowance of a writ of certiorari to the Circuit Court of Appeals for the Seventh Circuit, to the end that the cause herein may be reviewed and decided by this court, and that the decree and orders herein by said Circuit Court of Appeals may be reversed, and for such relief as to this Court may seem meet.

WEIGHTSTILL WOODS,
Attorney for Petitioner.